

The Potential for Increased On Rail Competition

Response from Rail Freight Group

November 2011

1. Rail Freight Group (RFG) is pleased to respond to the ORR's consultation on the potential for on rail competition.
2. This consultation does not directly relate to the provision of freight services, or on rail competition between freight operators. RFG has no formal opinion on the role of open access passenger operators in the provision of passenger services, or how this should be encouraged or otherwise. Our comments in this consultation are therefore limited to areas of common interest now, or potentially in the future, on matters of charging or capacity for freight.
3. It is however of note that the development of a competitive environment in the provision of rail freight services has been a key factor in improving cost efficiency, and in encouraging modal shift. Moving the passenger sector towards a less restrictive and more competitive basis could perhaps therefore yield similar benefits.
4. In awarding access, ORR must balance its full range of duties. We are concerned that this balance does not become unduly dominated by the needs of funders leading to prioritisation of services that generate the greatest short term income irrespective of the overall benefits delivered. A move towards scarcity charging or auction value would make that balance more difficult to achieve. ORR must maintain its independence in awarding future access.

Capacity

5. The consultation does not provide any significant detail on how capacity for increased passenger competition might be provided. Certainly, recent applications for open access passenger services have found it difficult to secure the necessary paths on the primary trunk routes, and it is unclear that less restrictive calling patterns would affect this to any significant extent. It is unclear to us if a different approach will be taken in future franchises.
6. Freight operators are indifferent to who provides passenger services, but it is vital that in making decisions on access, ORR takes full and due consideration of freight needs, both for existing services and reasonable aspirations for growth, and does not allow freight needs to be subsumed under those of passenger services. RFG has been pressing for the urgent completion of the workstream to identify Strategic Capacity on the network – for all users – and this must now be prioritised ahead of any opening up of competition.

Charges

7. At present, freight services, and open access passenger services are charged in the same way - that is they only pay the variable charge. Although the charging proposals in the consultation relate only to open access passenger services at present, we are concerned to ensure that they do not set precedent for future charging of freight services, and that they do not establish frameworks for open access operators that would be unhelpful for freight.
8. We therefore have a number of concerns with the framework as proposed.
 - a. It is commonly accepted that freight, which only pays the variable charge, receives more restricted access (e.g. does not run in the peaks). The same principle is applied to open access passenger services and the not primarily abstractive test. However, whilst these restrictions are accepted in access conditions, it is not clear that they are binding under 2001/EC/14 which states that all services paying the variable are entitled to the minimum access package. The legal basis should be clarified.
 - b. Presently, the key freight markets are being assessed to determine if they can afford to pay more in the next control period. Para 5.33 suggests that the existing open access passenger market will not be tested in such a way. It is unclear why this test would not be applied to all operators. Conversely, before additional charges can be levied we would have expected that the open access passenger sector would be tested to determine whether it can afford to pay more.
 - c. We note that under the directive the affordability test applies to the market, and not to individual services within the market.
 - d. It is unclear how the value auction approach complies with the requirement for charges to be transparent and non-discriminatory. It is also unclear how they align with the ORR duty to allow railway companies to plan their business with a reasonable degree of assurance, as the access charge payable for a new service would not be known until some way through service development. Overall, we are unclear why a value auction approach is preferred to simply charging some or all of the fixed charge if the market can bear it.
 - e. It is unclear how the value auction regime would interface with proposals for scarcity charges which are being delivered more generally.

Summary

9. In summary we have a number of concerns with the proposal, particularly if the approach could set precedent for future freight charges on congested routes. Strategic Capacity must be developed prior to any opening up of the open access passenger sector.